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 JAMES ROOT

UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

12 JAMES ROOT, an individual,)
 13)
 Plaintiff,)
 14)
 vs.)
 15)
 DESERT PALACE, INC., a Nevada)
 16 corporation d/b/a CAESARS PALACE HOTEL)
 & CASINO; LAS VEGAS METROPOLITAN)
 17 POLICE DEPARTMENT; DOES I through V;)
 and ROE CORPORATIONS VI through X,)
 18)
 Defendants.)
 19)

Case No. 2:09-cv-1940-LDG-RJJ

PLAINTIFF'S MOTION TO VOLUNTARILY DISMISS AS TO

DEFENDANT, LAS VEGAS METROPOLITAN POLICE DEPARTMENT

22 COMES NOW, Plaintiff, JAMES ROOT, by and through his attorneys, ROGER P.
 23 CROTEAU & ASSOCIATES, LTD., and hereby moves for leave to voluntarily dismiss the
 24 instant action as it relates to Las Vegas Metropolitan Police Department ("LVMPD"). This
 25 Motion is made and based upon the papers and pleadings on file herein, the points and


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1 authorities submitted in support hereof, and any oral argument that this Honorable Court may
2 entertain at the hearing of this matter.

3 DATED this 26th day of April, 2011.

4 ROGER P. CROTEAU & ASSOCIATES, LTD.

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14 **POINTS AND AUTHORITIES**

15 **STATEMENT OF RELEVANT FACTS**

16 The instant action arises out of an incident that occurred upon the premises commonly
17 known as the Caesars Palace Hotel & Casino, located at 3570 Las Vegas Boulevard South, Las
18 Vegas, Nevada 89109 (*the "Premises"*) on or about December 1, 2006. On said date, Plaintiff
19 was legally upon the Premises playing blackjack as a patron and business invitee of DESERT
20 PALACE, INC., a Nevada corporation d/b/a CAESARS PALACE HOTEL & CASINO
21 (*"Caesars"*). Plaintiff's causes of action arise from his claimed unlawful detention by agents
22 and employees of Caesars, as well as by LVMPD.

23 On or about March 24, 2011, LVMPD filed a Motion to Compel Discovery related to
24 written discovery that it had served. At approximately the same time, Plaintiff was in the process
25 of attempting to negotiate a settlement of the matter. This was in part the reason that the
26 discovery responses were not completed in a timely manner. Ultimately, Plaintiff negotiated a
27 confidential resolution of the matter as it relates to Caesars. Plaintiff thereafter contacted counsel
28 for LVMPD to inquire whether it would stipulate to the dismissal of the action. Counsel for
LVMPD responded that he would contact his client.

As a result of the anticipated resolution of the matter and his expectation that the Motion

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would therefore become moot, Plaintiff's counsel did not file a response to the Motion to Compel Discovery. On April 20, 2011, the court entered a Minute Order granting the Motion to Compel Discovery. Thereafter, on April 25, 2011, counsel for LVMPD advised that his client would not stipulate to the dismissal of the action because it viewed the action as frivolous and because it wished to attempt to recover its attorneys' fees and costs.

To date, most of the work that has been done on this case has related to the Defendants' efforts to have the matter dismissed for failure to timely serve the Defendants. This issue was resolved in favor of the Plaintiff. Not until February, 2011, did the Defendants cause Answers to be filed to the Complaint. In short, LVMPD has not incurred a great deal of expense related to the action.

LEGAL ARGUMENT

A. STATEMENT OF THE LAW

Federal Rule of Civil Procedure 41 governs the dismissal of actions, stating in pertinent part as follows:

(a) Voluntary Dismissal.

(1) By the Plaintiff.

...

(2) By Court Order; Effect.

Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

B. PLAINTIFF HAS ACTED IN GOOD FAITH

Contrary to the views of LVMPD, the instant action was not filed in bad faith. There is no dispute that the Plaintiff was handcuffed and detained by Caesars and LVMPD. There is little dispute that the Plaintiff was detained without good cause. Specifically, the detention was based upon warrants which were not active. The primary dispute is whether the Defendants knew that this was the case and whether they thus knowingly wrongfully detained the Plaintiff. Further questions exist as to whether the LVMPD conspired with Caesars personnel to help fabricate a

1 basis for their actions.

2 Although the Plaintiff continues to feel that he possesses valid claims for relief against
3 LVMPD, various factors, including financial considerations, are making it difficult for the
4 Plaintiff to proceed. As a result, he has offered to dismiss the action as to LVMPD with
5 prejudice. LVMPD is unwilling to agree to such a dismissal.

6 **C. LVMPD HAS NOT BEEN PREJUDICED**

7 It is unclear why LVMPD refuses to agree to the dismissal of this matter. LVMPD did
8 not file a Counterclaim and possesses no claims against the Plaintiff. While LVMPD has
9 retained counsel, not a great deal of work has been done on the case. This is particularly true
10 considering the length of time that the case has been pending. Answers were only recently filed
11 and the majority of the work that has been done related to the efforts of the Defendants to have
12 the action dismissed for an alleged failure to timely serve the Defendants. This issue was
13 resolved in favor of the Plaintiff. LVMPD has not incurred great expense to date.

14 **D. GOOD CAUSE EXISTS TO DISMISS THIS ACTION**

15 If forced to do so, Plaintiff will continue to prosecute its case against LVMPD.
16 Obviously, a Judgment will be entered against LVMPD in the event that the Plaintiff prevails.
17 At the very least, it is going to cost LVMPD a great deal more money to proceed to trial. The
18 Plaintiff's proposed dismissal of the action will alleviate all of these potential expenses.

19 While LVMPD apparently wishes to attempt to recover what it has spent so far on this
20 case, the likelihood of successfully doing so is extremely small. Plaintiff is not in a financial
21 position to offer to compensate LVMPD for its fees and costs. The best that he can do is exactly
22 what he is proposing. In the event that a substantial award of fees and costs were to be awarded
23 to LVMPD in the future, the Plaintiff would likely be forced to seek bankruptcy protection.

24 Plaintiff and Plaintiff's counsel are aware that this Court is very busy. At this point,
25 given the Plaintiff's willingness to dismiss the action, this case is clogging the court system and
26 causing and will cause additional work for the Court and its staff. The only reason this action
27 will be pending is LVMPD's refusal to agree to a dismissal.

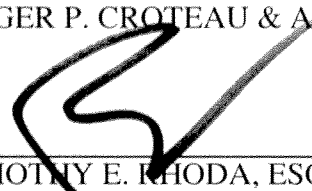
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CONCLUSION

The Plaintiff has acted in good faith at all times. LVMPD has suffered little harm and possesses no claims against the Plaintiff. There is quite simply no reason for this case to continue drain upon the Court's resources. Based on the foregoing, Plaintiff respectfully requests that this honorable court grant Plaintiff's Motion to Voluntarily Dismiss as to Defendant, LVMPD with each party bearing its own costs and attorneys' fees.

DATED this 26th day of April, 2011.

ROGER P. CROTEAU & ASSOCIATES, LTD.


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Attorneys for Plaintiff
JAMES ROOT

CERTIFICATE OF MAILING

I hereby certify that on the 26th day of April, 2011, I served a copy of the foregoing PLAINTIFF'S MOTION TO VOLUNTARILY DISMISS AS TO DEFENDANT, LAS VEGAS METROPOLITAN POLICE DEPARTMENT, by causing a copy of the same to be deposited in the United States mail, postage prepaid, addressed as follows:

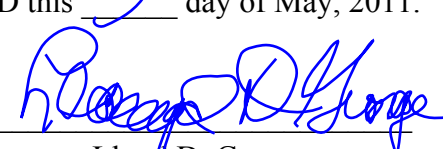
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Attorneys for Defendant
**LAS VEGAS METROPOLITAN
POLICE DEPARTMENT**

David M. Jones, Esq.
OLSON, CANNON, GORMLEY
& DESRUISSEAU
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
Attorneys for Defendant
DESERT PALACE, INC.

ORDER
IT IS SO ORDERED.

DATED this 3 day of May, 2011.


An employee of ROGER P. CROTEAU & ASSOCIATES, LTD.


Lloyd D. George
Sr. U.S. District Judge